

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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GARY CRUZ and CLAUDE PAIN, Individually and
on behalf of all others similarly situated,

Case No. 10-cv-08026 (PKC)

Plaintiffs,

DECLARATION OF
G. OLIVER KOPPELL

-against-

TD BANK, N.A.,

Defendant.

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G. Oliver Koppell declares under the pains and penalties of perjury:

1. I am the principal attorney of the Law Offices of G. Oliver Koppell, counsel for the Plaintiffs and the putative class in this proceeding.
2. I make this affirmation in support of Plaintiffs' motion to vacate the judgment of dismissal in this matter pursuant to Fed.R.Civ.P. 60(b)(1) or Fed.R.Civ.P 60(b)(6) and for leave to file and serve a Second Amended Complaint pursuant to Fed.R.Civ.P. 15(a)(2).
3. On November 7th, 2014 I received by e-mail the order of this court dismissing the case.
4. We had no notice of the Court's consideration of dismissal and I was not aware of a rule providing for dismissal after 150 days of an order permitting the filing of an amended complaint.
5. There had been no intention to delay filing and serving an amended complaint pursuant to the Court's orders of April 7, 2014 and June 3, 2014. There was absolutely no tactical advantage to our clients or our firm for the delay. I had engaged in no discussions regarding such a tactic, nor had I even contemplated such a possibility.
6. The only reason for the delay, for which I apologize, is the press of other business including other cases involving the EIPA statute.

7. My firm consists of three attorneys. I have two associates, one of whom is a newly admitted attorney who was hired in March, 2014. The responsibility for work on this matter was principally assigned to my associate, Daniel Schreck, who has submitted a declaration in support of our motion. I have reviewed the declaration and agree with it in all respects.
8. Immediately after reading the Court's order on Friday, November 7th, 2014 I called Your Honor's chambers and spoke to a woman who identified herself as a court attorney. I gave her the name of the case and the case number and told her that I wished to ask the court to restore the case to the active calendar. She told me to fax my request to the court. I understood her statement to mean that I could make the request to restore in this manner. I immediately prepared a letter request, faxed it to the Court and e-mailed copies of my request to the attorneys for the Defendant. If I misunderstood the information and instructions given to me, I apologize to the Court.
9. This matter involves the rights of thousands of depositors to the T.D. Bank who were victimized by the bank's illegal conduct. I respectfully request that we be permitted to pursue this matter on their behalf.

Dated: New York, New York
November 19, 2014

/s/
G. Oliver Koppell